THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7478 of 2005

18.8.2005

Between:

Gedela Satyanarayana, S/o.Krishnam Naidu, F.P.Shop dealer,

Komallapudi village, Butchayyapeta Mandal, Visakhapatnam District.

… Petitioner

AND

The Revenue Divisional Officer, Visakhapatnam.

… Respondent

ORDER:

The petitioner was appointed as a fair price shop dealer of Komallapudi village of Butchayyapeta Mandal of Visakhapatnam District in the year 1992. It appears that he was elected as President of Milk Society, Komallapudi and Director of Visakha Milk Society. The respondent issued a show cause notice dated 09.9.2004 calling upon the petitioner as to why his fair price shop authorization should not be suspended. The petitioner submitted explanation contending that milk society is not a cooperative society registered under the A.P.Cooperative Societies Act, 1964 (hereafter called as '1964 Act'), that it is registered under Section 5 of A.P.Mutually Aided Cooperative Societies Act, 1995 (hereafter called as '1995 Act') and therefore, he does not incur any disqualification for holding the fair price shop authorization. He also contended that the office of President of milk society registered under 1995 Act does not amount to holding public post. After considering the explanation, the respondent issued proceedings on 18.1.2005 informing the petitioner to relinquish fair price shop dealership or the Office of Director of milk society. The petitioner was also informed that if he does not do so, necessary action will be taken against him. Assailing the same, the present writ petition is filed.

This Court initially granted interim order on 28.4.2005. The respondent came forward with an application for vacating the stay. As the controversy is in very short compass, the matter was heard finally and is being disposed of by this order.

The learned Counsel for the petitioner, Sri B.Devanand, contends that the milk society registered under 1995 Act is not funded by the State and there is no State control. The activities of the society are not at all connected with the public and therefore, holding the post of President of milk society does not amount to holding a public post or holding an office in public life. Nextly, he would contend that A.P.Public Distribution System Control Order, 2001 (Control Order, for brevity) or the guidelines issued by the Government under G.O.Ms.No.53 dated 06.10.2003

disqualifying the President of Cooperative Society are not attracted as the petitioner is a President of mutually aided cooperative society registered under 1995 Act. He placed reliance on decisions in **M.Karunanidhi v. Union of India**, **R.S.Nayak v. A.R.Antulay** and a full Bench judgment of Punjab & Haryana High Court in **State of Punjab v. Kesari Chand**.

Opposing the writ petition, the learned Assistant Government Pleader for Civil Supplies, Sri Sesha Talpa Sai, relies on annexure to Control Order and guideline No.12 in annexure to G.O.Ms.No.53 dated 06.10.2003 to contend that even the President of a cooperative society registered under 1995 Act incurs disqualification for being appointed or continued as a fair price shop dealer.

The only point that arises for consideration is whether President of the mutually aided cooperative society registered under 1995 Act is disqualified for being appointed as a fair price shop dealer or for being continued as a fair price shop dealer?

Section 2(p) of 1964 Act reads as under:

> 'society' means a Co-operative society registered or deemed to be registered under this Act.
>
> Section 2(d) of 1995 Act reads as under:
>
> "Co-operative Society" means a Mutually Aided Co-operative Society registered under Section 4 whose bye-laws prohibit it from raising share capital from the Government, a Co-operative Society registered under Section 7 of the Andhra Pradesh Co-operative Societies Act, 1964, if it amends its bye-laws where necessary to reconstitute its capital base and in respect of other relevant aspects to be in accordance with this Act, and returns to the Government its share capital, if any, and either enters into a Memorandum of Understanding with the Government for any outstanding loans due to, or guarantees given by the Government or returns to the Government of such assistance and further gets itself registered under Section 4 as a Co-operative Society under this Act.

A reading of Section 2(p) of 1964 Act and Section 2(d) of 1995 Act together would show that a 'mutually aided cooperative society' is one which is registered under Section 4 of 1995 Act. Even a society registered under Section 7 of 1964 Act can be treated as a cooperative society within the meaning of 1995 Act, if such society amends its byelaws and returns to the Government its share capital. Though the participation of Government by contributing share capital distinguishes both the kinds of societies, essentially the object and purpose of a cooperative society under 1964 Act and 1995 Act is the same. Insofar as office bearers are concerned, merely because there is no financial assistance by the Government, there is no pervasive control by the Government and the activities are no way connected with general public, they do not cease to be such office bearers of a cooperative society.

The petitioner was appointed as fair price shop dealer in 1992 when Milk society, Komallapudi was a society under 1964 Act. By reason of the relevant Control Order,

namely, A.P. Scheduled Commodities Regulation of Distribution by Card System (Order) 1973 (1973 Control Order, for short) and guidelines issued thereunder, the petitioner was not qualified as he was President of a cooperative society. 1973 Control Order is now superceded by A.P. State Public Distribution System (Control) Order, 2001(2001 Control Order, for short). For the purpose of effective implementation of 2001 Control Order, the Government issued guidelines in G.O.Ms.No.53 dated 06.10.2003. Guideline No.12(1) declares that the individuals holding any public office like Sarpanch of Gram Panchayat, President of Mandal Praja Parishad, Chairman of Zilla Parishad, Councillors/Chairman of Municipalities etc., shall not be eligible for being appointed as fair price shop dealers. Presidents of Cooperative societies are also declared as ineligible for being authorized as dealers of fair price shops. It is interesting to notice that no distinction is made by guideline No.12(1) between the Presidents of the Cooperative societies registered under 1964 Act and 1995 Act. When guideline No.12(1) declares Presidents of Cooperative societies as ineligible, it would be irrelevant consideration whether they hold public office or not. The relevant guideline declares that President of a cooperative society as holding of public office and therefore the submission of the learned Counsel for the petitioner that President of cooperative society does not hold public office is devoid of any merit. In that view of the matter, the decisions cited by the learned Counsel for the petitioner are of no assistance.

As per the Control Order 2001 and guidelines issued thereunder, the petitioner is ineligible to continue as fair price shop dealer of Komallapudi village of Butchayyapeta Mandal and therefore, there is no illegality or infirmity in the impugned proceedings issued by the respondent.

In the result, the writ petition is dismissed without any order as to costs.

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(**V.V.S.RAO,J**)

August 18, 2005.

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